



Reprinted
January 30, 2009

HOUSE BILL No. 1167

DIGEST OF HB 1167 (Updated January 29, 2009 12:10 pm - DI 107)

Citations Affected: IC 22-3; IC 32-30; IC 34-6; IC 34-20; IC 34-31.

Synopsis: Actions based on exposure to hazardous substances or asbestos. Provides statutes of limitations for causes of action for occupational disease, deficiencies in the design, planning, supervision, construction, or observation of construction of an improvement to real property, and product liability when the cause of action is based on an exposure to a hazardous substance. Provides for a one year period, ending July 1, 2010, to file an otherwise time-barred cause of action based on an exposure to a hazardous substance. Requires a court to award attorney fees if the court makes certain findings. Limits liability for certain asbestos claims. Limits civil liability from asbestos claims for certain corporations.

Effective: July 1, 2009.

Tyler, Lawson L

January 13, 2009, read first time and referred to Committee on Labor and Employment.
January 27, 2009, reported — Do Pass.
January 29, 2009, read second time, amended, ordered engrossed.

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HB 1167—LS 6556/DI 102+



Reprinted
January 30, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1167

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-3-7-9, AS AMENDED BY P.L.201-2005,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 9. (a) As used in this chapter, "employer" includes
4 the state and any political subdivision, any municipal corporation
5 within the state, any individual or the legal representative of a deceased
6 individual, firm, association, limited liability company, or corporation
7 or the receiver or trustee of the same, using the services of another for
8 pay. A parent corporation and its subsidiaries shall each be considered
9 joint employers of the corporation's, the parent's, or the subsidiaries'
10 employees for purposes of sections 6 and 33 of this chapter. Both a
11 lessor and a lessee of employees shall each be considered joint
12 employers of the employees provided by the lessor to the lessee for
13 purposes of sections 6 and 33 of this chapter. The term also includes an
14 employer that provides on-the-job training under the federal School to
15 Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth
16 under section 2.5 of this chapter. If the employer is insured, the term
17 includes the employer's insurer so far as applicable. However, the

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1 inclusion of an employer's insurer within this definition does not allow
 2 an employer's insurer to avoid payment for services rendered to an
 3 employee with the approval of the employer. The term does not include
 4 a nonprofit corporation that is recognized as tax exempt under Section
 5 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))
 6 to the extent the corporation enters into an independent contractor
 7 agreement with a person for the performance of youth coaching
 8 services on a part-time basis.

9 (b) As used in this chapter, "employee" means every person,
 10 including a minor, in the service of another, under any contract of hire
 11 or apprenticeship written or implied, except one whose employment is
 12 both casual and not in the usual course of the trade, business,
 13 occupation, or profession of the employer. For purposes of this chapter
 14 the following apply:

15 (1) Any reference to an employee who has suffered disablement,
 16 when the employee is dead, also includes the employee's legal
 17 representative, dependents, and other persons to whom
 18 compensation may be payable.

19 (2) An owner of a sole proprietorship may elect to include the
 20 owner as an employee under this chapter if the owner is actually
 21 engaged in the proprietorship business. If the owner makes this
 22 election, the owner must serve upon the owner's insurance carrier
 23 and upon the board written notice of the election. No owner of a
 24 sole proprietorship may be considered an employee under this
 25 chapter unless the notice has been received. If the owner of a sole
 26 proprietorship is an independent contractor in the construction
 27 trades and does not make the election provided under this
 28 subdivision, the owner must obtain an affidavit of exemption
 29 under section 34.5 of this chapter.

30 (3) A partner in a partnership may elect to include the partner as
 31 an employee under this chapter if the partner is actually engaged
 32 in the partnership business. If a partner makes this election, the
 33 partner must serve upon the partner's insurance carrier and upon
 34 the board written notice of the election. No partner may be
 35 considered an employee under this chapter until the notice has
 36 been received. If a partner in a partnership is an independent
 37 contractor in the construction trades and does not make the
 38 election provided under this subdivision, the partner must obtain
 39 an affidavit of exemption under section 34.5 of this chapter.

40 (4) Real estate professionals are not employees under this chapter
 41 if:

42 (A) they are licensed real estate agents;

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(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(5) A person is an independent contractor in the construction trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(7) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(8) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of this chapter.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. **For purposes of this chapter the following apply:**

(1) A minor employee shall be considered as being of full age for all purposes of this chapter. ~~However,~~

(2) If the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the

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1 employer shall be wholly liable for the other one-half (1/2) of the
 2 compensation or benefits. If the employee is a minor who is not
 3 less than sixteen (16) years of age and who has not reached
 4 seventeen (17) years of age, and who at the time of the last
 5 exposure is employed, suffered, or permitted to work at any
 6 occupation which is not prohibited by law, ~~the provisions of this~~
 7 ~~subsection prescribing double the amount otherwise recoverable~~
 8 ~~do~~ **subdivision does** not apply.

9 **(3)** The rights and remedies granted to a minor under this chapter
 10 on account of disease shall exclude all rights and remedies of the
 11 minor, ~~his~~ **the minor's** parents, ~~his~~ **the minor's** personal
 12 representatives, dependents, or next of kin at common law,
 13 statutory or otherwise, on account of any disease.

14 (d) This chapter does not apply to:

15 **(1)** casual laborers as defined in subsection (b); ~~nor to~~

16 **(2)** farm or agricultural employees; ~~nor to~~

17 **(3)** household employees; ~~nor to~~

18 **(4)** railroad employees engaged in train service as engineers,
 19 firemen, conductors, brakemen, flagmen, baggagemen, or
 20 foremen in charge of yard engines and helpers assigned thereto;
 21 ~~nor to their~~

22 **(5)** ~~the employers with respect to these of the employees Also,~~
 23 ~~this chapter does not apply to described in subdivision (4); or~~

24 **(6)** employees or their employers with respect to employments in
 25 which the laws of the United States provide for compensation or
 26 liability for injury to the health, disability, or death by reason of
 27 diseases suffered by these employees.

28 (e) As used in this chapter, "disablement" means the event of
 29 becoming disabled from earning full wages at the work in which the
 30 employee was engaged when last exposed to the hazards of the
 31 occupational disease by the employer from whom the employee claims
 32 compensation or equal wages in other suitable employment, and
 33 "disability" means the state of being so incapacitated.

34 (f) For the purposes of this chapter, ~~no compensation shall be~~
 35 ~~payable for or on account of any occupational diseases unless~~
 36 ~~disablement, as defined in subsection (e), occurs within two (2) years~~
 37 ~~after the last day of the last exposure to the hazards of the disease~~
 38 ~~except for the following:~~

39 **(1)** ~~In all cases of occupational diseases caused by the inhalation~~
 40 ~~of silica dust or coal dust, no compensation shall be payable~~
 41 ~~unless disablement, as defined in subsection (e), occurs within~~
 42 ~~three (3) years after the last day of the last exposure to the hazards~~

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of the disease:

(2) in all cases of occupational disease caused by the exposure to radiation; **a hazardous substance (as defined in IC 34-6-2-52(b))**, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within two (2) years from the date on which the employee had knowledge of the nature of the employee's occupational disease or, by exercise of reasonable diligence, should have known of the existence of such disease and its causal relationship to the employee's employment.

(3) In all cases of occupational diseases caused by the inhalation of asbestos dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease if the last day of the last exposure was before July 1, 1985.

(4) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1985; and before July 1, 1988; no compensation shall be payable unless disablement, as defined in subsection (e), occurs within twenty (20) years after the last day of the last exposure:

(5) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1988; no compensation shall be payable unless disablement (as defined in subsection (e)) occurs within thirty-five (35) years after the last day of the last exposure:

(g) For the purposes of this chapter, no compensation shall be payable for or on account of death resulting from any occupational disease unless death occurs within two (2) years after the date of disablement. However, this subsection does not bar compensation for death:

(1) where death occurs during the pendency of a claim filed by an employee within two (2) years after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal; or

(2) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within two (2) years after the end of such fixed period; but in no event later than three hundred (300) weeks after the date of disablement:

in all cases of occupational disease caused by the exposure to a hazardous substance (as defined in IC 34-6-2-52(b)) in which:

(1) disablement occurred before July 1, 2009; and

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(2) an action based on the disablement was barred on July 1, 2009, by a period of limitations or repose in effect before July 1, 2009;

the action may be commenced after June 30, 2009, and before July 1, 2010, notwithstanding any other law to the contrary.

(h) As used in this chapter, "billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(i) As used in this chapter, "billing review standard" means the data used by a billing review service to determine pecuniary liability.

(j) As used in this chapter, "community" means a geographic service area based on ZIP code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by ZIP codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by ZIP codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by ZIP codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by ZIP codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by ZIP codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 ZIP code and ZIP codes with the first three (3) digits 462.

(7) The geographic service area served by ZIP codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by ZIP codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under this chapter.

(l) As used in this chapter, "pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

(m) For an action commenced under subsection (g), the court

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shall award attorney's fees as a part of the costs to the prevailing party, if the court finds that either party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
- (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
- (3) litigated the action in bad faith.

(n) The award of fees under subsection (m) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees twice.

SECTION 2. IC 32-30-1-5, AS AMENDED BY P.L.79-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As used in this section, "designer" means a person who:

- (1) designs, plans, supervises, or observes the construction of an improvement to real property; or
- (2) constructs an improvement to real property.

(b) As used in this section, "possessor" means a person having ownership, possession, or control of real property at the time an alleged deficiency in an improvement to the real property causes injury or wrongful death.

(c) As used in this section, "deficiency" does not mean a failure by a possessor to use reasonable care to maintain an improvement to real property following a substantial completion of an improvement.

(d) An action to recover damages, whether based upon contract, tort, nuisance, or another legal remedy, for:

- (1) a deficiency or an alleged deficiency in the design, planning, supervision, construction, or observation of construction of an improvement to real property;
- (2) an injury to real or personal property arising out of a deficiency; or
- (3) an injury or wrongful death of a person arising out of a deficiency;

may not be brought against a designer or possessor unless the action is commenced within the earlier of ten (10) years after the date of substantial completion of the improvement or twelve (12) years after the completion and submission of plans and specifications to the owner if the action is for a deficiency in the design of the improvement.

(e) An action for a deficiency or alleged deficiency in the design,

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1 planning, supervision, construction, or observation of construction
 2 of an improvement to real property that is based on personal
 3 injury, disability, disease, or death from an exposure to a
 4 hazardous substance (as defined in IC 34-6-2-52(b)) that occurs
 5 within:

6 (1) ten (10) years after the date of substantial completion of
 7 the improvement; or

8 (2) twelve (12) years after the completion and submission of
 9 plans and specifications to the owner;

10 must be commenced within two (2) years after the cause of action
 11 accrues. The subsequent development of additional personal
 12 injury, disability, disease, or death is a new and separate cause of
 13 action under this subsection.

14 (f) A cause of action under subsection (e) accrues on the date
 15 when the injured person knows:

16 (1) that the person has a personal injury, disability, or disease
 17 caused by exposure to a hazardous substance (as defined in
 18 IC 34-6-2-52(b)); and

19 (2) that the exposure occurred as a result of a deficiency in the
 20 design, planning, supervision, construction, or observation of
 21 construction of an improvement to real property.

22 (g) The limitations period described in subsection (e) applies to
 23 all actions for personal injury, disease, disability, or death caused
 24 by exposure to a hazardous substance (as defined in
 25 IC 34-6-2-52(b)) that occurred as a result of a deficiency in the
 26 design, planning, supervision, construction, or observation of
 27 construction of an improvement to real property, whether those
 28 actions accrue before, on, or after July 1, 2009.

29 (h) An action for personal injury, disease, disability, or death
 30 caused by exposure to a hazardous substance (as defined in
 31 IC 34-6-2-52(b)) that occurred as a result of a deficiency in the
 32 design, planning, supervision, construction, or observation of
 33 construction of an improvement to real property that was barred
 34 on July 1, 2009, by a period of limitations or repose in effect before
 35 July 1, 2009, may be commenced after June 30, 2009, and before
 36 July 1, 2010, notwithstanding any other law to the contrary.

37 (i) For an action commenced under subsection (h), the court
 38 shall award attorney's fees as a part of the costs to the prevailing
 39 party, if the court finds that either party:

40 (1) brought the action or defense on a claim or defense that is
 41 frivolous, unreasonable, or groundless;

42 (2) continued to litigate the action or defense after the party's

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claim or defense clearly became frivolous, unreasonable, or groundless; or

(3) litigated the action in bad faith.

(j) The award of fees under subsection (i) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees twice.

SECTION 3. IC 32-30-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) **This section applies to actions commenced under section 5(d) of this chapter.**

~~(a) Notwithstanding section 5 of this chapter;~~ (b) If an injury to or wrongful death of a person occurs during the ninth or tenth year after substantial completion of an improvement to real property, an action in tort to recover damages for the injury or wrongful death may be brought within two (2) years after the date on which the injury occurred, irrespective of the date of death.

~~(b)~~ (c) However, an action may not be brought more than:

(1) twelve (12) years after the substantial completion of construction of the improvement; or

(2) fourteen (14) years after the completion and submission of plans and specifications to the owner, if the action is for a deficiency in design;

whichever comes first.

SECTION 4. IC 34-6-2-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11.5. **"Asbestos claim", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-1.**

SECTION 5. IC 34-6-2-29.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 29.5 **"Corporation", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-2.**

SECTION 6. IC 34-6-2-52 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 52. (a) "Hazardous substance", for purposes of IC 34-30-6, means:

(1) a material or waste that has been determined to be hazardous or potentially hazardous to any individual, to property, or to the environment by the United States Environmental Protection Agency, the federal Nuclear Regulatory Commission, the United States Department of Transportation, the solid waste management board, or the United States Occupational Safety and Health Agency or any agent or designee of any of the above mentioned

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boards, agencies, or commission; or

(2) any substance that may be potentially hazardous to any person, to property or to the environment.

(b) "Hazardous substance", for purposes of IC 34-20-3-2, means a material or waste that has been determined to be hazardous or potentially hazardous to any individual, to property, or to the environment by the United States Environmental Protection Agency, the federal Nuclear Regulatory Commission, the United States Department of Transportation, the solid waste management board, or the United States Occupational Safety and Health Agency or any agent or designee of any of the above mentioned boards, agencies, or commission.

SECTION 7. IC 34-6-2-71 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 71. (a) "Insurer", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-17.

(b) "Insurer", for purposes of IC 34-53, has the meaning set forth in IC 27-1-2-3.

(c) "Insurer", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-3.5

SECTION 8. IC 34-6-2-142.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 142.5. "Successor asbestos related liability", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-4.

SECTION 9. IC 34-6-2-143.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 143.8. "Transferor corporation", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-5.

SECTION 10. IC 34-20-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) **Except as provided in subsection (d)**, a product liability action that is based on:

(1) property damage resulting from ~~asbestos~~; **a hazardous substance (as defined in IC 34-6-2-52(b))**; or

(2) personal injury, disability, disease, or death resulting from exposure to ~~asbestos~~; **a hazardous substance (as defined in IC 34-6-2-52(b))**;

occurring within ten (10) years after the delivery of the product to the initial user or consumer, must be commenced within two (2) years after the cause of action accrues. The subsequent development of an additional ~~asbestos related~~ disease or injury is a new injury and is a separate cause of action.

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(b) A product liability action for personal injury, disability, disease, or death resulting from exposure to ~~asbestos~~ **a hazardous substance (as defined in IC 34-6-2-52(b))** accrues on the date when the injured person knows that the person has ~~an asbestos related~~ **a disease or injury caused by exposure to a hazardous substance.**

(c) A product liability action for property damage accrues on the date when the injured person knows that the property damage has resulted from ~~asbestos~~ **a hazardous substance (as defined in IC 34-6-2-52(b)).**

(d) ~~This section applies only to A product liability actions action~~ against

~~(1) persons who mined and sold commercial asbestos; and~~

~~(2) funds that have, as a result of bankruptcy proceedings or to avoid bankruptcy proceedings, been created for the payment of asbestos hazardous substance (as defined in IC 34-6-2-52(b)) related disease claims or asbestos hazardous substance (as defined in IC 34-6-2-52(b)) related property damage claims, must be commenced within two (2) years after the cause of action accrues, and claims against these funds are not subject to the ten (10) year period as described in subsection (a).~~

(e) This section applies to all product liability actions that are based on property damages or personal injury, disability, disease or death resulting from exposure to hazardous substances (as defined in IC 34-6-2-52(b)) that accrue before, on, or after July 1, 2009.

(f) A product liability action that is based on property damage or personal injury, disability, disease, or death resulting from exposure to hazardous substances (as defined in IC 34-6-2-52(b)) that was barred on July 1, 2009, by a period of limitations or repose that was in effect before July 1, 2009, may be commenced after June 30, 2009, and before July 1, 2010, notwithstanding any other law to the contrary.

~~(e) For the purposes of IC 1-1-1-8, if any part of this section is held invalid, the entire section is void.~~

~~(f) (c)~~ Except for the cause of action expressly recognized in this section, this section does not otherwise modify the limitation of action or repose period contained in section 1 of this chapter.

(g) This section applies to all product liability actions that are based on personal injury, disability, disease, or death resulting from exposure to a hazardous substance that accrue before, on, or after July 1, 2009.

(h) A product liability action that is based on personal injury,

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disease, disability, or death resulting from exposure to a hazardous substance that was barred on July 1, 2009, by a period of limitations or repose that was in effect before July 1, 2009, may be commenced after June 30, 2009, and before July 1, 2010, notwithstanding any other law to the contrary.

(f) For an action commenced under subsection (e), the court shall award attorney's fees as a part of the costs to the prevailing party, if the court finds that either party:

(1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;

(2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or

(3) litigated the action in bad faith.

(g) The award of fees under subsection (f) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees twice.

SECTION 11. IC 34-31-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 8. Limited Liability Concerning Asbestos Related Claims

Sec. 1. As used in this chapter, "asbestos claim" means any claim for damages, losses, indemnifications, contribution, or other relief concerning asbestos, including:

(1) a claim relating to the health effects of exposure to asbestos, including:

(A) personal injury;

(B) death;

(C) mental injury;

(D) emotional injury;

(E) risk of disease or other injury; or

(F) the costs of medical monitoring or surveillance;

(2) a claim made by or on behalf of any person exposed to asbestos, including a claim of a:

(A) representative;

(B) spouse;

(C) parent;

(D) child; or

(E) other relative;

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- 1 of a person exposed to asbestos; and
 2 (3) a claim for damage or loss caused by the:
 3 (A) installation;
 4 (B) presence; or
 5 (C) removal of asbestos.

6 Sec. 2. As used in this chapter, "corporation" means a
 7 corporation for profit, including a domestic corporation organized
 8 under Indiana law or a foreign corporation organized under the
 9 law of a jurisdiction other than Indiana.

10 Sec. 3. As used in this chapter, "insurer" means a company,
 11 firm, partnership, association, order, society, or system making any
 12 kind or kinds of insurance and shall include associations operating
 13 as Lloyds, reciprocal or interinsurers, or individual underwriters.

14 Sec. 4. As used in this chapter, "successor corporation" means
 15 a corporation that:

- 16 (1) assumes;
 17 (2) incurs;
 18 (3) has assumed; or
 19 (4) has incurred;

20 successor asbestos related liability.

21 Sec. 5. As used in this chapter, "successor asbestos related
 22 liability" means any liability that is related to an asbestos claim
 23 that was assumed or incurred by a corporation as a result of:

- 24 (1) a merger or consolidation with another corporation;
 25 (2) the plan of merger or consolidation related to the merger
 26 or consolidation; or
 27 (3) the exercise of control or the ownership of stock of the
 28 corporation before the merger or consolidation.

29 Sec. 6. As used in this chapter, "transferor corporation" means
 30 a corporation from which a successor asbestos related liability was
 31 assumed or incurred.

32 Sec. 7. (a) Subject to subsections (c) and (d) and sections 10 and
 33 12 of this chapter, the cumulative successor asbestos related
 34 liabilities of a successor corporation are limited to the fair market
 35 value of the total gross assets of the transferor corporation,
 36 determined as of the time of the merger or consolidation through
 37 which the successor corporation assumed or incurred successor
 38 asbestos related liability.

39 (b) A successor corporation is not responsible for successor
 40 asbestos related liability in excess of the limitation set forth in
 41 subsection (a).

42 (c) For purposes of this section, if a transferor corporation

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1 assumed or incurred successor asbestos related liability in
 2 connection with a merger or consolidation with a prior transferor
 3 corporation, the fair market value of the total gross assets of the
 4 prior transferor corporation determined as of the time of the
 5 earlier merger or consolidation shall be substituted for the
 6 limitation set forth in subsection (a) to determine the limitation of
 7 liability of the successor corporation.

8 (d) Cumulative successor asbestos related liabilities include
 9 liabilities that exist after the merger or consolidation of the
 10 successor corporation and the transferor corporation and that are
 11 paid or discharged by or on behalf of the:

12 (1) successor corporation; or

13 (2) transferor corporation;

14 as part of a settlement or judgment in Indiana or another
 15 jurisdiction.

16 Sec. 8. The limitations set forth in section 7 of this chapter apply
 17 to a corporation that is a successor corporation and became a
 18 successor corporation before January 1, 1972, or is a successor of
 19 that corporation's successors.

20 Sec. 9. The limitations set forth in section 7 of this chapter do
 21 not apply to:

22 (1) worker's compensation benefits paid by or on behalf of an
 23 employer to an employee under IC 22-3 or a comparable
 24 worker's compensation law in another jurisdiction;

25 (2) a claim against a corporation that is not a successor
 26 asbestos related liability;

27 (3) any obligation under the federal National Labor Relations
 28 Act (29 U.S.C. 151, et seq.);

29 (4) a collective bargaining agreement;

30 (5) an insurer as defined in section 3 of this chapter.

31 (6) a successor corporation that after a merger or
 32 consolidation continued in the business of:

33 (A) mining asbestos;

34 (B) selling or distributing asbestos fibers;

35 (C) manufacturing, distributing, removing, or installing
 36 asbestos containing products;

37 that were the same or substantially the same as those products
 38 previously manufactured, distributed, removed, or installed
 39 by the transferor corporation.

40 Sec. 10. A successor corporation may establish the fair market
 41 value of the total gross assets, including intangible assets, of a
 42 transferor corporation to determine limitations under section 7 of

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1 this chapter by any reasonable method, including:

- 2 (1) by reference to the going concern value of the assets;
- 3 (2) by reference to the purchase price attributable to or paid
- 4 for assets in an arms length transaction; or
- 5 (3) in the absence of other readily available information from
- 6 which the fair market value can be determined, by reference
- 7 to the value of the assets recorded on a balance sheet.

8 Sec. 11. (a) If the total gross assets of a transferor corporation
9 include liability insurance issued to the transferor corporation, this
10 chapter does not affect the applicability, terms, conditions, or
11 limits of the liability insurance.

12 (b) This chapter does not affect the rights and obligations of an
13 insurer, transferor, or successor under an insurance contract or
14 any related agreements, including:

- 15 (1) preenactment settlements resolving coverage related
- 16 disputes; or
- 17 (2) contracts regarding the rights of an insurer to seek
- 18 payment for applicable deductibles, retrospective premiums,
- 19 self insured periods, or periods as to which insurance is
- 20 uncollectible or unavailable.

21 (c) A settlement of a dispute concerning liability insurance
22 coverage entered into by a:

- 23 (1) transferor corporation; or
- 24 (2) successor corporation;

25 with the insurers of a transferor corporation before July 1, 2009,
26 is determinative of the total coverage of liability insurance to be
27 included in the calculation of a transferor corporation's total gross
28 assets under this chapter.

29 Sec. 12. (a) Except as provided in subsections (b) through (d),
30 the sum determined as the fair market value of the total gross
31 assets of a transferor corporation as of the time of a merger or
32 consolidation for purposes of determining the limit on the
33 cumulative successor asbestos related liabilities of a successor
34 corporation under this chapter shall be adjusted annually at a rate
35 equal to the sum of the following:

- 36 (1) The prime rate listed in the first edition of the Wall Street
- 37 Journal published for each calendar year since the merger or
- 38 consolidation. If the prime rate is not published in the first
- 39 edition of the Wall Street Journal, then a reasonable
- 40 determination of the prime rate on the first day of the year
- 41 may be used.
- 42 (2) One percent (1%).

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- 1 (b) The rate described in subsection (a) may not be
- 2 compounded.
- 3 (c) The adjustment of the fair market value of the total gross
- 4 assets of the transferor corporation as of the time of the merger or
- 5 consolidation shall continue as described in subsection (a) until the
- 6 date as of which the adjusted value is first exceeded by the
- 7 cumulative amounts of successor asbestos related liabilities paid or
- 8 committed to be paid by or on behalf of:
- 9 (1) the successor corporation;
- 10 (2) any predecessor corporation; and
- 11 (3) the transferor corporation;
- 12 after the time of the merger or consolidation.
- 13 (d) No adjustment of the fair market value of total gross assets
- 14 of a transferor corporation under this section shall be applied to
- 15 any liability insurance.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1167, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

NIEZGODSKI, Chair

Committee Vote: yeas 6, nays 5.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1167 be amended to read as follows:

Page 5, line 3, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".

Page 5, line 41, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".

Page 7, line 32, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".

Page 8, line 4 delete "34-6-2-52);," and insert "**34-6-2-52(b));**".

Page 8, line 10, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".

Page 8, line 17, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".

Page 8, between lines 38 and 39, begin a new paragraph and insert:

"SECTION 4. IC 34-6-2-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11.5. "Asbestos claim", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-1.**

SECTION 5. IC 34-6-2-29.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 29.5 "Corporation", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-2."**

Page 8, line 40, after "52." insert "**(a)**".

Page 8, line 41, delete "IC 34-20-3-2 and".

Page 9, between lines 9 and 10, begin a new paragraph and insert:

"(b) "Hazardous substance", for purposes of IC 34-20-3-2, means a material or waste that has been determined to be hazardous or potentially hazardous to any individual, to property, or to the environment by the United States Environmental Protection Agency, the federal Nuclear Regulatory Commission, the United States Department of Transportation, the solid waste management board, or the United States Occupational Safety and Health Agency or any agent or designee of any of the above mentioned boards, agencies, or commission.



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SECTION 7. IC 34-6-2-71 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 71. (a) "Insurer", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-17.

(b) "Insurer", for purposes of IC 34-53, has the meaning set forth in IC 27-1-2-3.

(c) "Insurer", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-3.5

SECTION 8. IC 34-6-2-142.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 142.5. "Successor asbestos related liability", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-4.**

SECTION 9. IC 34-6-2-143.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 143.8. "Transferor corporation", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-5."**

Page 9, line 11, after "(a)" insert **"Except as provided in subsection (d),"**.

Page 9, line 12, delete "on" and insert "on:".

Page 9, line 13, reset in roman "(1) property damage resulting from".

Page 9, line 13, after "asbestos;" insert **"a hazardous substance (as defined in IC 34-6-2-52(b));"**.

Page 9, line 13, reset in roman "or".

Page 9, line 14, reset in roman "(2)".

Page 9, line 15, after "substance" insert **"(as defined in IC 34-6-2-52(b));"**.

Page 9, line 16, before "must" insert **"occurring within ten (10) years after the delivery of the product to the initial user or consumer,"**.

Page 9, line 20, after "substance" insert **"(as defined in IC 34-6-2-52(b))"**.

Page 9, delete lines 24 through 32 and insert:

"(c) A product liability action for property damage accrues on the date when the injured person knows that the property damage has resulted from ~~asbestos~~: a hazardous substance (as defined in IC 34-6-2-52(b)).

(d) This section applies only to A product liability actions action against

(1) persons who mined and sold commercial asbestos; and

(2) funds that have, as a result of bankruptcy proceedings or to

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avoid bankruptcy proceedings, been created for the payment of ~~asbestos~~ **hazardous substance (as defined in IC 34-6-2-52(b))** related disease claims or ~~asbestos~~ **hazardous substance (as defined in IC 34-6-2-52(b))** related property damage claims, **must be commenced within two (2) years after the cause of action accrues, and claims against these funds are not subject to the ten (10) year period as described in subsection (a).**

(e) This section applies to all product liability actions that are based on property damages or personal injury, disability, disease or death resulting from exposure to hazardous substances (as defined in IC 34-6-2-52(b)) that accrue before, on, or after July 1, 2009.

(f) A product liability action that is based on property damage or personal injury, disability, disease, or death resulting from exposure to hazardous substances (as defined in IC 34-6-2-52(b)) that was barred on July 1, 2009, by a period of limitations or repose that was in effect before July 1, 2009, may be commenced after June 30, 2009, and before July 1, 2010, notwithstanding any other law to the contrary."

Page 9, line 38, delete "(d)" and insert "(g)".

Page 9, line 42, delete "(e)" and insert "(h)".

Page 10, after line 5 begin a new paragraph and insert:

"SECTION 11. IC 34-31-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 8. Limited Liability Concerning Asbestos Related Claims

Sec. 1. As used in this chapter, "asbestos claim" means any claim for damages, losses, indemnifications, contribution, or other relief concerning asbestos, including:

- (1) a claim relating to the health effects of exposure to asbestos, including:**
 - (A) personal injury;**
 - (B) death;**
 - (C) mental injury;**
 - (D) emotional injury;**
 - (E) risk of disease or other injury; or**
 - (F) the costs of medical monitoring or surveillance;**
- (2) a claim made by or on behalf of any person exposed to asbestos, including a claim of a:**
 - (A) representative;**
 - (B) spouse;**

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- (C) parent;
- (D) child; or
- (E) other relative;
- of a person exposed to asbestos; and
- (3) a claim for damage or loss caused by the:
 - (A) installation;
 - (B) presence; or
 - (C) removal of asbestos.

Sec. 2. As used in this chapter, "corporation" means a corporation for profit, including a domestic corporation organized under Indiana law or a foreign corporation organized under the law of a jurisdiction other than Indiana.

Sec. 3. As used in this chapter, "insurer" means a company, firm, partnership, association, order, society, or system making any kind or kinds of insurance and shall include associations operating as Lloyds, reciprocal or interinsurers, or individual underwriters.

Sec. 4. As used in this chapter, "successor corporation" means a corporation that:

- (1) assumes;
- (2) incurs;
- (3) has assumed; or
- (4) has incurred;

successor asbestos related liability.

Sec. 5. As used in this chapter, "successor asbestos related liability" means any liability that is related to an asbestos claim that was assumed or incurred by a corporation as a result of:

- (1) a merger or consolidation with another corporation;
- (2) the plan of merger or consolidation related to the merger or consolidation; or
- (3) the exercise of control or the ownership of stock of the corporation before the merger or consolidation.

Sec. 6. As used in this chapter, "transferor corporation" means a corporation from which a successor asbestos related liability was assumed or incurred.

Sec. 7. (a) Subject to subsections (c) and (d) and sections 10 and 12 of this chapter, the cumulative successor asbestos related liabilities of a successor corporation are limited to the fair market value of the total gross assets of the transferor corporation, determined as of the time of the merger or consolidation through which the successor corporation assumed or incurred successor asbestos related liability.

(b) A successor corporation is not responsible for successor

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asbestos related liability in excess of the limitation set forth in subsection (a).

(c) For purposes of this section, if a transferor corporation assumed or incurred successor asbestos related liability in connection with a merger or consolidation with a prior transferor corporation, the fair market value of the total gross assets of the prior transferor corporation determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in subsection (a) to determine the limitation of liability of the successor corporation.

(d) Cumulative successor asbestos related liabilities include liabilities that exist after the merger or consolidation of the successor corporation and the transferor corporation and that are paid or discharged by or on behalf of the:

- (1) successor corporation; or
- (2) transferor corporation;

as part of a settlement or judgment in Indiana or another jurisdiction.

Sec. 8. The limitations set forth in section 7 of this chapter apply to a corporation that is a successor corporation and became a successor corporation before January 1, 1972, or is a successor of that corporation's successors.

Sec. 9. The limitations set forth in section 7 of this chapter do not apply to:

- (1) worker's compensation benefits paid by or on behalf of an employer to an employee under IC 22-3 or a comparable worker's compensation law in another jurisdiction;
- (2) a claim against a corporation that is not a successor asbestos related liability;
- (3) any obligation under the federal National Labor Relations Act (29 U.S.C. 151, et seq.);
- (4) a collective bargaining agreement;
- (5) an insurer as defined in section 3 of this chapter.
- (6) a successor corporation that after a merger or consolidation continued in the business of:
 - (A) mining asbestos;
 - (B) selling or distributing asbestos fibers;
 - (C) manufacturing, distributing, removing, or installing asbestos containing products;

that were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor corporation.

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Sec. 10. A successor corporation may establish the fair market value of the total gross assets, including intangible assets, of a transferor corporation to determine limitations under section 7 of this chapter by any reasonable method, including:

- (1) by reference to the going concern value of the assets;
- (2) by reference to the purchase price attributable to or paid for assets in an arms length transaction; or
- (3) in the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

Sec. 11. (a) If the total gross assets of a transferor corporation include liability insurance issued to the transferor corporation, this chapter does not affect the applicability, terms, conditions, or limits of the liability insurance.

(b) This chapter does not affect the rights and obligations of an insurer, transferor, or successor under an insurance contract or any related agreements, including:

- (1) preenactment settlements resolving coverage related disputes; or
- (2) contracts regarding the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, self insured periods, or periods as to which insurance is uncollectible or unavailable.

(c) A settlement of a dispute concerning liability insurance coverage entered into by a:

- (1) transferor corporation; or
- (2) successor corporation;

with the insurers of a transferor corporation before July 1, 2009, is determinative of the total coverage of liability insurance to be included in the calculation of a transferor corporation's total gross assets under this chapter.

Sec. 12. (a) Except as provided in subsections (b) through (d), the sum determined as the fair market value of the total gross assets of a transferor corporation as of the time of a merger or consolidation for purposes of determining the limit on the cumulative successor asbestos related liabilities of a successor corporation under this chapter shall be adjusted annually at a rate equal to the sum of the following:

- (1) The prime rate listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation. If the prime rate is not published in the first edition of the Wall Street Journal, then a reasonable

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determination of the prime rate on the first day of the year may be used.

(2) One percent (1%).

(b) The rate described in subsection (a) may not be compounded.

(c) The adjustment of the fair market value of the total gross assets of the transferor corporation as of the time of the merger or consolidation shall continue as described in subsection (a) until the date as of which the adjusted value is first exceeded by the cumulative amounts of successor asbestos related liabilities paid or committed to be paid by or on behalf of:

- (1) the successor corporation;
- (2) any predecessor corporation; and
- (3) the transferor corporation;

after the time of the merger or consolidation.

(d) No adjustment of the fair market value of total gross assets of a transferor corporation under this section shall be applied to any liability insurance."

Renumber all SECTIONS consecutively.

(Reference is to HB 1167 as printed January 27, 2009.)

VAN HAAFTEN

HOUSE MOTION

Mr. Speaker: I move that House Bill 1167 be amended to read as follows:

Page 6, between lines 41 and 42, begin a new paragraph and insert:

"(m) For an action commenced under subsection (g), the court shall award attorney's fees as a part of the costs to the prevailing party, if the court finds that either party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;**
- (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or**
- (3) litigated the action in bad faith.**

(n) The award of fees under subsection (m) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees

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twice."

Page 8, between lines 22 and 23, begin a new paragraph and insert:

"(i) For an action commenced under subsection (h), the court shall award attorney's fees as a part of the costs to the prevailing party, if the court finds that either party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;**
- (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or**
- (3) litigated the action in bad faith.**

(j) The award of fees under subsection (i) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees twice."

Page 10, after line 5, begin a new paragraph and insert:

"(f) For an action commenced under subsection (e), the court shall award attorney's fees as a part of the costs to the prevailing party, if the court finds that either party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;**
- (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or**
- (3) litigated the action in bad faith.**

(g) The award of fees under subsection (f) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees twice."

(Reference is to HB 1167 as printed January 27, 2009.)

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